

The Honorable Christopher M Alston
Chapter 7
Hearing Location: Telephonic
Hearing Date: December 4, 2020
Hearing Time: 9:30 a.m.
Response Date: November 27, 2020

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WASHINGTON

In re:

Willie James Echols
Debtor.

CASE NO.: 19-10359-CMA

Chapter: 7

MOTION FOR RELIEF FROM THE
AUTOMATIC STAY BY
MONTANA FUNDING, LLC

COMES NOW Montana Funding, LLC (“Movant” or “Creditor”) and moves this Court for an Order Terminating the Automatic Stay, allowing Movant to proceed with and complete any and all contractual/statutory remedies incident to the interest held by virtue of the Promissory Note and Deed of Trust described below and attached as exhibits to the Declaration in Support of Movant’s Motion for Relief from the Automatic Stay.

I. RELEVANT FACTS

A. The Property

On or about November 9, 2018, Willie James Echols (“Debtor”), executed a Promissory Note in favor of Eastside Funding, LLC in the original principal amount of \$280,154.36 (“Promissory Note”). Debtor, as described by the Promissory Note, are secured by a Deed of Trust (“Deed of Trust”) properly recorded and creating a lien against the Property commonly known as 318 South 104th Street, Seattle, Washington 98168 (the “Property”).

Creditor is the holder of the Note and thus has standing to enforce the Note pursuant to RCW §62A.3-301. The Deed of Trust was pledged as incident to the Note and thus, as the holder of the Note, Creditor also has the right to enforce the Deed of Trust that follows the note. The

Note matured on June 7, 2019.

Debtor filed for protection under Chapter 7 of Title 11 of the United States Code on January 31, 2019. The bankruptcy case was discharged on June 18, 2019 and first closed on June 21, 2019. The case was then re-opened on July 13, 2020.

The subject property was acquired by the Debtor post-petition and post-discharge, prior to the recent bankruptcy case re-opening and was not originally included in the petition though is now included, thereby requiring this motion.

A non-judicial foreclosure action had commenced earlier this year and is currently on hold. No sale date has been scheduled as of yet.

B. The Debt

As of October 21, 2020, Debtor owes the full amount of the Note by virtue of the loan having matured on June 7, 2019. The approximate amount owed under the terms of the Promissory Note is \$361,706.33. This is an approximation of the Loan, including principal balance plus accrued interest, late charges, escrow shortages and other fees and costs as allowed under the terms of the Deed of Trust. This estimate is accurate as of the date provided to Movant's Counsel of Record and is intended only for the purposes of this Motion. This amount cannot be relied upon for any other purposes, including payoff of the secured debt. A complete, date specific and itemized payoff figure may be obtained from Movant upon written request to Movant's Counsel of Record.

As of October 21, 2020, the Debtor has accumulated the following post-petition default:

Loan Matured:	June 7, 2019
Total Amount Due:	\$361,706.33

C. The Value of the Property

The value of the Property is \$300,000.00, per Debtor's Schedules A/B. The total

1 debt secured by collateral is \$361,706.33. There is no equity in the collateral and it is over-
2 encumbered by (\$85,706.33) after deducting \$24,000.00 liquidation costs.

3 4 **II. LAW AND ARGUMENT**

5 **A. Standing**

6 To prosecute a Motion for Relief from the Automatic Stay as to enforcement of a
7 Promissory Note and Deed of Trust, Movant must establish that it has an interest in the Promissory
8 Note, either as a holder or as a party entitled to enforce the Promissory Note. See *In re Veal*, 450
9 B.R. 897 (9th Cir. BAP 2011). In the case at bar, the Declaration and Exhibits supporting the
10 Motion establish that Movant is the holder of the Promissory Note and thus has standing to
11 prosecute the instant Motion.

12 **B. Basis for Relief from Stay**

13 Section 362(d)(2) of the Bankruptcy Code authorizes the court to lift the automatic stay of
14 an act against property where the debtor has no equity in such property and the property is not
15 necessary for an effective reorganization. *In re Dollar Associates*, 172 B.R. 945, 953 (Bankr. N.D.
16 Cal. 1994). Since a Chapter 7 case does not contemplate reorganization, the sole issue before the
17 court when stay relief is sought under Section 362(d)(2) is whether the debtor has equity in the
18 property. See e.g., *Nev. Nat'l Bank v. Casbul of Nev., Inc.*, 22 B.R. 65, 66 (9th Cir. BAP 1982);
19 *Ramco Indus. v. Preuss (In re Preuss)*, 15 B.R. 896 (9th Cir. BAP 1981). In determining whether
20 there is equity in the property, all encumbrances on the property, including all costs and fees must
21 be considered. *In re Sun Valley Newspapers, Inc.*, 171 B.R. 71, 75 (Bankr. 9th Cir. 1994), citing
22 *Stewart v. Gurley*, 745 F.2d 1194, 1196 (9th Cir. 1984)).

23 Pursuant to the provisions of 11 U.S.C. § 361 and § 362(d)(1), even where the debtor has
24 equity in Property, relief for cause may be granted by the Court pursuant to 11 U.S.C. § 362(d)(1),
25 where the Creditor's interest in the property is not adequately protected. *In re Ellis*, 60 B.R. 432,
26 435 (B.A.P. 9th Cir. 1985). Movant submits that adequate protection in this case requires normal
27 and periodic cash payments, as called for by the Note, plus the repayment of any and all delinquent
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1 amounts owed to Movant, including all attorneys' fees and costs incurred in the filing of this
2 Motion.

3 Based on the foregoing, Movant is informed and believes that Debtor is presently unable
4 or unwilling to provide adequate protection to Movant and there is no probability that adequate
5 protection will be provided to Movant within a reasonable time. As such Movant should be entitled
6 to relief from stay under 11 U.S.C. 362(d)(1) and (d)(2).

7 **III. PRAYER FOR RELIEF**

8 For the reasons stated above, Movant requests:

9 1. Relief from the Automatic Stay under §362(d)(1) and/or (2) to allow Movant (and
10 any successors or assigns) to proceed under applicable non-bankruptcy law and enforce its
11 remedies to obtain possession of the Subject Property.

12 2. That the Order be binding and effective despite any conversion of this Bankruptcy
13 case to a case under any other Chapter of Title 11 of the United States Bankruptcy Code.

14 3. For an Order that the 14-day Stay described by Bankruptcy Rule 4001(a)(3) be
15 waived.

16 4. For such other relief as the Court deems proper.

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19 Dated: October 29, 2020

ZBS Law, LLP

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21 /s/ Scott D. Crawford
22 Scott D. Crawford, WSBA 34978
23 Attorney for Movant.
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